

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

North Platte Post Office
North Platte, Nebraska

Docket No. A2015-3

PUBLIC REPRESENTATIVE RESPONSE IN SUPPORT OF
UNITED STATES POSTAL SERVICE MOTION
TO DISMISS PROCEEDINGS

(May 11, 2015)

Pursuant to 39 C.F.R. § 3001.21 of the Commission's Rules, the Public Representative hereby responds in support of the Postal Service's motion to dismiss the appeal of the Postal Service's decision to relocate retail service at its North Platte, Nebraska main post office.¹

I. PETITION FOR REVIEW

On April 21, 2015, the Commission docketed an appeal of a Postal Service decision to relocate retail operations currently located at the North Platte main post office (MPO), 300 E Third Street, North Platte, Nebraska to the North Platte Processing Center located at 1302 Industrial Avenue, North Platte, Nebraska.²

¹ Motion of United States Postal Service to Dismiss Proceedings, Docket No. A2013-3. May 1, 2015. (Motion to Dismiss).

² Letter postmarked April 10, 2015 (Petition). The letter was signed by Dwight Livingston, Mayor of the City of North Platte (Petitioner).

Section 404(d)(5) of title 39 provides the Commission authority to review decisions of the Postal Service to close or consolidate post offices. Petitioner argues that the Postal Service's action constitutes a consolidation. Petition at 1. The Petition also states the decision to close the facility failed to comply with regulations for post office relocations within the community. 39 C.F.R. § 241.4. Petition at 1-2.

The Commission instituted this proceeding to consider the Petition and established May 1, 2015 as the deadline for the Postal Service to file the applicable Administrative Record for this appeal.³ On May 1, 2015, the Postal Service filed a Motion to Dismiss Proceedings, but did not file an Administrative Record. On May 8, 2015, the Petitioner filed a "Motion for Enlargement of Time to Respond to Motion to Dismiss and to File Form 61" requesting a Commission order allowing Petitioner 10 days from the Postal Service's filing of the Administrative Record to respond to the Postal Service's motion to dismiss and to file Form 61.

II. POSTAL SERVICE MOTION TO DISMISS

The Postal Service's Motion to Dismiss argues that its decision to move retail postal services from the main post office is a relocation rather than a consolidation. Motion to Dismiss at 1. The Postal Service states that the final decision letter indicates, "the Postal Service will install retail counters at the North Platte Mail Processing Center and Post Office Boxes sufficient to meet the needs of the current North Platte MPO customers." *Id.* at 3, Exhibit 1. The letter also indicates the Postal Service will maintain the same level of service for customers within the North Platte community while avoiding a significant rental expense. *Id.* at 1, Exhibit 1. The new location is located 1.5 miles from the current North Platte MPO. *Id.* at Exhibit 2.

The Postal Service points out that 39 U.S.C. § 404(d) does not apply to the relocation of operations of postal retail facilities within the same community. *Id.*

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule, April 21, 2015 (Order No. 2449).

Accordingly, the Postal Service contends the Commission lacks jurisdiction to consider the appeal. *Id.* at 8. The Postal Service further contends that even if the commission has jurisdiction to review decisions to relocate retail operations, the Postal Service complied with its relocation regulations at 39 C.F.R. § 241.4. *Id.*

III. DISCUSSION

A Postal Service determination to “close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission.” 39 U.S.C. § 404(d)(5). It is well settled that Commission jurisdiction arises only where, the Postal Service’s action constitutes either a “closing” or a “consolidation.” If the action is to relocate a post office, the Commission does not have authority to consider the merits of the appeal.

A series of factually similar Commission cases, many, if not all, of which are cited by the Postal Service, support its Motion to Dismiss. *Id.* at 3-5. The Commission has long held that a relocation of retail postal operations from one facility to another within the community does not constitute, as a matter of law, a “closing” or “consolidation” for purposes of section 404(d). The following Commission orders are illustrative:

- Docket No. A2013-1, Santa Monica, California, Order Dismissing Appeal, Order No. 1588, December 19, 2012. (Ruling that transfer of retail operations to a carrier annex less than one mile away from the MPS was a relocation of retail services and 39 U.S.C. § 404(d) did not apply).
- Docket No. A2012-17, Venice, Order Granting Motion to Dismiss, Order No. 1166, January 24, 2012. (Ruling that 39 U.S.C. §404(d) did not apply where the transfer of retail operations to a carrier annex 400 feet away was a relocation of retail services).
- Docket No. A2011-21, Ukiah, Order Granting Motion to Dismiss, Order No. 804, August 15, 2011. (Ruling that 39 U.S.C. § 404(d) did not apply

where the transfer of retail operations to a carrier annex one mile away from the main post office was a relocation of retail services);

- Docket No. A2010-2, *Sundance Post Office-Steamboat Springs*, Order Dismissing Appeal, Order No. 448, April 27, 2010. (Ruling that 39 U.S.C. § 404(d) did not apply where the transfer of retail operations to a facility within the same community constituted a relocation or rearrangement of facilities).
- Docket No. A2007-1, *Ecorse Classified Branch*, Order Dismissing Appeal on Jurisdictional Grounds, Order No. 37, October 9, 2007. (Ruling that 39 U.S.C. §404(d) did not apply where the new retail facility was 1.7 miles away in the same community).
- Docket No. A86-13, *Wellfleet*, Order Dismissing Docket No. A86-13, Order No. 696, June 10, 1986. (Ruling that 39 U.S.C. § 404(d) did not apply where the new location was within communities roughly 2-3 miles apart with no defined borders and the new location was 1.2 miles away from the former location)⁴;
- Docket No. A82-10, *Oceana Station*, Order Dismissing Docket No. A82-10, Order No. 436, (June 25, 1982. (Ruling that 39 U.S.C. § 404(d) did not apply where the new location was four miles away from the former location).

These decisions support the conclusion that the relocation of retail services or rearrangement of retail facilities within a community does not constitute a closing or a consolidation—a prerequisite for an appeal under Section 404(d).

⁴ The *Wellfleet* Order is instructive as it defines “closing a post office” as used in the statute as the elimination of a post office from a community. It further defines “consolidation” as a change in the management structure of a post office which includes the elimination of the postmaster position. Order No 696 at 2. Neither applies in this case.

Because the Commission is precluded by law from reviewing the appeal, the Commission need not reach the issue of the Postal Service's compliance with its own regulations regarding relocations.

IV. CONCLUSION

For the reasons stated above, for lack of subject matter jurisdiction the Commission should grant the Motion of United States Postal Service to Dismiss Proceedings and deny the Motion for Enlargement of the Time to Respond to Motion to Dismiss and to File Form 61.

Respectfully Submitted,

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